

Message Text

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ACTION ARA-14

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-05 H-01
INR-07 L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02
SS-15 USIA-06 IO-13 DLOS-09 OES-07 /102 W
-----083508 290302Z /65

R 272045Z JAN 78

FM AMEMBASSY BUENOS AIRES
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E.O. 11652 N/A
TAGS PBOR, PGOV, AR, CI
SUBJECT ARGENTINA REJECTS BEAGLE AWARD

REF: A BUENOS AIRES 0628 B 77 BUENOS AIRES 9833 (NOTAL)

INTRODUCTION AND SUMMARY: THE ARGENTINE GOVERNMENT
ON WEDNESDAY, JANUARY 25 ISSUED A DECLARATION THAT
DUE TO SERIOUS DEFECTS IN THE BEAGLE CHANNEL RULING
GOA CONSIDERS THE FULING NULL AND VOID AND WILL NOT
CONSIDER ITSELF BOUND TO HONOR THE AWARDS
FINDINGS. AT THE SAME TIME IT REAFFIRMED
ARGENTINE SOVEREIGNTY OVER "ALL LAND AND SEA
TERRITORY IN THE ATLANTIC EAST OF THE CAPE HORN
MERIDIAN, IN ACCORD WITH THE LETTER AND SPIRIT OF
THE TREATIES OF 1881, 1893, AND 1902." IN AS
ACCOMPANYING NOTE SENT TO THE CHILEAN FOREIGN
MINISTRY, FOREIGN MINISTER MONTES ALSO ADVISED THE
CHILEAN GOVERNMENT THAT ARGENTINA WOULD NOT RECOGNIZE ANY
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CHILEAN CLAIMS BASED ON THE FINDINGS IN THE AWARD AND PROPOSED
BILATERAL NEGOTIATIONS TO RESOLVE THE DISPUTE IN A HARMONIOUS
FASHION. THE BUENOS AIRES PRESS REPORTED THAT THE NEXT
PRESIDENTIAL SUMMIT WOULD TAKE PLACE IN PUERTO MONTT, CHILE,
ON FEBRUARY 6. THE MEETING WAS REPORTEDLY ARRANGED THROUGH
PRESIDENT PINOCHET'S PERSONAL ENVOY GENERAL TORO DAVILIA.
CHILEAN AMBASSADOR ROJAS GALDAMES, WHO RECEIVED THE DECLARATION FROM

THE HANDS OF MONTES AT NOON WEDNESDAY, RETURNED TO SANTIAGO THE FOLLOWING DAY AND REPORTEDLY WILL BE REASSIGNED TO SPAIN. SANTIAGOS JANUARY 26 FORMAL REJECTION OF ARGENTINAS "NULLIFICATION STATEMENT" WAS WIDELY REPORTED HERE TODAY. END INTRODUCTION AND SUMMARY.

1. ON JANUARY 25 ARGENTINA RELEASED A DECLARATION STATING IT REGARDED AS NULL THE BEAGLE CHANNEL RULING, AND ITS INTENTION TO DEFEND ARGENTINE SOVEREIGNTY OVER LAND AND SEA TERRITORY EAST OF THE CAPE HORN MERIDIAN. THE DECLARATION, WHICH TRACED THE ARGENTINE GOVERNMENTS LONG AND FRUSTRATED EFFORTS TO RESOLVE THE JURISDICTIONAL DISPUTE BILATERALLY WITH CHILE, CLAIMS THAT ARGENTINA WAS FORCED TO TAKE THE VERY DIFFICULT STEP OF DECLARING THE AWARD NULL BECAUSE OF SERIOUS AND DAMAGING ERRORS COMMITTED BY THE INTERNATIONAL COURT. THE DECLARATION LISTS SIX CATEGORIES OF ERRORS COMMITTED:

(A) MISINTERPRETATION OF THE ARGENTINE POSITION: THE ARGENTINE THESIS WAS THAT THE MOUTH OF THE BEAGLE CHANNEL BEGINS NORTH OF LENNOX ISLAND AND RUNS BETWEEN NAVARINO AND PICTON ISLANDS, NOT THAT IT EXTENDS ALONGSIDE LENNOX ISLAND AS SUSTAINED BY THE COURT, ACCORDING TO THE DEFINITIVE STATEMENT MADE HERE, ARGENTINAS CLAIM TO LENNOX IS IN ITS CHARACTER AS AN ATLANTIC ISLAND, NOT AS AN ISLAND SITUATED IN THE BEAGLE CHANNEL. THIS FUNDAMENTAL MISREPRESENTATION, ARGENTINA ASSERTS, DISTORTS THE ENTIRE ARGUMENTATION AS WELL AS THE RATIONALE FOR THE COURTS DECISION.

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(B) OPINIONS PROONOUNCED OVER LITIGIOUS QUESTIONS NOT SUBMITTED TO ARBITRATION: THE COURT EXCEEDED ITS JURISDICTION, THE ARGENTINE STATEMENT CLAIMS, BY RULING ON ISLANDS OUTSIDE OF THE "HAMMER" (THAT AREA OFFICIALLY PUT TO ARBITRATION) AND BY MAKING PRONOUNCEMENTS ON THE EASTERN MOUTH OF THE STRAITS OF MAGELLEN.

(C) CONTRADICTORY REASONING: THE ARGENTINE STATEMENT CLAIMS THE COURT CONTRADICTS ITSELF IN SEOMTIMES REFERRING TO SOME ISLANDS AS BEING "INSIDE" THE CHANNEL AND ELSEWHERE IN THE AWARD AS BEING "SOUTH" OF THE CHANNEL. ALSO THE COURT AT ONE POINT DISCARDS CONFLICTING HISTORICAL DOCUMENTS, BUT THE LATER ACCEPTS THE ONE SUPPORTING THE CHILEAN THESIS AND REJECTS THE ONE SUPPORTING ARGENTINA.

(D) EXCESSES IN INTERPRETATION: THE COURT GOES BEYOND ITS INSTRUCTIONS, SAYS GOA, TO INTERPRET THE TREATY OF 1881, AND INSTEAD ACTUALLY REVISES THAT TREATY TO SUIT ITS FINDINGS. TERRITORIAL JURISDICTION IN PATAGONIA AND ON ISLA GRANDE, AND THE DISPOSITION OF LENNOX, PICTON AND NUEVA IN WAYS OTHER THAN THOSE INTENDED IN THE 1881 TREATY.

(E) HISTORICAL AND GEOGRAPHICAL ERRORS: ARGENTINA ASSERTS THAT THE COURT MADE BASIC FACTUAL ERRORS, SUCH AS PLACING STEWARD, OBRIEN AND LONDONERRY ISLANDS SOUTH OF THE CHANNEL

WHEREAS IN FACT THEY HAVE NO RELATION TO THE CHANNEL, AND BY INVENTING AN "ARCHIPELAGO OF CAPE HORN" WHICH IS NON EXISTENT. GOA ALSO CHARGES THAT THE COURT REFUSED TO ACKNOWLEDGE THE PROTOCOL OF 1883 AS BEING PERTINENT TO ITS CONSIDERATION OF THE TREATY OF 1881, WHEN IT IS CLEAR THAT THE PROTOCOL IS UNDERSTOOD BY BOTH PARTIES AS AN ADDENDUM AND CLARIFICATION OF THE TREATY OF 1881. THE PROTOCOLS IMPORTANT STATEMENT THAT CHILE WILL HAVE NO PRETENSIONS IN THE ATLANTIC NOR ARGENTINA IN THE PACIFIC IS THERFORE WRONGLY IGNORED BY THE COURT. TECHNICAL AND GEOGRAPHICAL ERRORS IN THE COURTS MAP TRACING THE BOUNDARY LINE ALSO PUTS INTO QUESTION ITS RELIABILITY.
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SS-15 USIA-06 IO-13 DLOS-09 OES-07 /102 W
-----083474 290302Z /65

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(F) LACK OF BALANCE IN THE APPRECIATION OF THE CASE AND PROOFS OF BOTH PARTIES: THE COURT BASED ITS FINDINGS NOT ON THE VALIDITY OF THE CHILEAN ARGUMENTS BUT BY THE SYSTEMATIC ELIMINATION OF ARGENTINAS ARGUMENTS, ACCORDING TO GOA. THE COURT WAS OBVIOUSLY PREJUDICED IN CHILES FAVOR, IGNORING OR CAPRICIOUSLY TREATING ARGENTINAS ARGUMENTS, NOT TO MENTION IT OTHER ERRORS IN INTERPRETATION AND JUDGMENT.

2. COMMENT: AS INDICATED IN REFTTEL B, ARGENTINE DIPLOMATS WHO WORKED ON THE BEAGLE CASE (AND, NO DOUBT, WHO DRAFTED THE ARGENTINE DECLARATIONS SIX POINTS) HONESTLY FELT THE COURTS FINDING WERE UNFAIRLY WEIGHTED IN CHILES FAVOR. NATURALLY,

ARGENTINA AS THE LOSING PARTY WAS SURE TO PICK OUT DISCREPANCIES AND ERRORS THAT IT WOULD NOT HAVE BOTHERED WITH HAD IT BEEN SATISFIED WITH THE AWARD. IN FACT UNTIL THE END IT WAS APPARENT THAT FOREIGN MINISTRY AS WELL AS OTHER GOVERNMENT OFFICIALS TRIED TO FIND A WAY TO PERMIT ARGENTINA TO ACCEPT THE RULING -- AS IT PERTAINED TO THE ISLANDS PICTON, NUEVA AND LENNOX -- WHILE NOT GIVING AWAY ITS LIMITED OFFICIAL USE

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SOVEREIGNTY OVER VAST AREAS IN THE SOUTHERN ATLANTIC. THE FAILURE OF SUCCESSIVE ARGENTINE MISSIONS TO NEGOTIATE SUCCESSFULLY AND UNDERSTANDING WITH CHILE TO THAT EFFECT WAS DEEPLY REGRETTEED HERE, AS WAS MADE CLEAR IN THE ARGENTINE DELCARATION AND REPEATED IN PRESS COMMENT TODAY. TODAYS PRESS REPORTS WERE MARKEDLY SUBDUED, MERELY NOTING DOWN THE CHILEAN REPUDIATION OF ARGENTINAS DECLARATION AND LOOKING AHEAD TO THE NEWLY RESCHEDULE PRESIDENTIAL MEETING IN CHILE. (WE UNDERSTAND FROM CONFIDENTIAL SOURCES THAT GOA INSTRUCTED THE PRESS TO PLAY THE ISSUE QUIETLY AND RESPONSIBLY, AND TO AVOID CONFRONTIONAL HARANGUES AGAINST CHILE.)

3. ARGENTINA DOES NOT DISPUTE THE CHARGE THAT ACCORDING TO ITS 1971 BILATERAL AGREEMENT WITH CHILE THE FINDINGS ARE LEGALLY BINDING AND NON APPEALABLE, NOR DOES IT ASK THE COURT TO RECONSIDER; IT SIMPLY DECLARES THAT ARGENTINA WILL NOT EXECUTE THE COURTS RULING, NOR WILL IT ACCEPT CHILEAN

PRETENSIONS IN THE SOUTHERN ATLANTIC BASED ON THE AWARD. ITS BASING ITS "NULLIFICATION" STATEMENT ON JURIDICAL ERRORS IS

NOT SO MUCH TO REOPEN THE CASE AS TO DEFEND ITS DECISION TO DISREGARD THE RULING.

4. ARGENTINA CLEARLY BELIEVES THE NEXT HURDLE IS THAT OF PUBLIC RELATIONS: IT IS BARGAINING THAT ITS DIPLOMATIC EFFORTS COUPLED WITH CHILES "BAD BOY" IMAGE IN THE WORLD CAN HEAD OFF A SHOW OF INTERNATIONAL SUPPORT CHILE. STILL UPPERMOST IN MOST MINDS AT PRESENT IS THE HOPE THAT CHILES AGREEING TO BILATERAL NEGOTIATIONS WILL SOFTEN ARGENTINAS APPEARING TO BE THE IGNOBLE AND RENEGING PARTY. CHILES FIRM REPLY TO ARGENTINA HAS LEFT NO DOUBT THAT IT CONSIDERS THE RULING TO BE INDEED VALID AND IN FORCE AND LIMITED OFFICIAL USE

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THAT THERFORE THE THREE ISLANDS ARE LEGITIMATELY CHILENA TERRITORY. CHILES AGREEMENT TO RESUME TALKS AT A SECOND

PRESIDENTIAL SUMMIT, THEN, WILL PRESUMABLY BE TO DISCUSS
THE DISPUTED SEA BOUNDARIES. (REPORTEDLY THE TWO
GOVERNMENTS ARE NOW CONSIDERING AN ARGENTINE OFFER -- FIRST
EXTENDED BY EARLIER EMISSARY GENERAL TORTI -- TO
INTERNATIONALIZE THE ISLANDS IN THE DISPUTED AREA AND A RECENT
CHILEAN PROPOSAL TO ESTABLISH A JOINT PATRIMONIAL SEA IN THE
DISPUTED AREA.) AS THE NEWSPAPERS INDICATE, THE TIME IS RIPE
NOW TO WORK OUT A COMPREHENSIVE SOLUTION TO THIS AGE OLD
BILATERAL DISPUTE. THE PROBABLE ALTERNATIVE AT THIS POINT
IS TO RETURN THE ISSUE TO THE STAUTS QUO ANTE, A CONSTANT IRRITANT
AND POTENTIAL SOURCE OF CONFLICT BETWEEN THE TWO NEIGHBORS.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: BEAGLE CHANNEL, GOVERNMENT REACTIONS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 27 jan 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978BUENOS00703
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780043-0580
Format: TEL
From: BUENOS AIRES
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780116/aaaaamvb.tel
Line Count: 236
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 07b670df-c288-dd11-92da-001cc4696bcc
Office: ACTION ARA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 05 may 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: N/A
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3703654
Secure: OPEN
Status: NATIVE
Subject: ARGENTINA REJECTS BEAGLE AWARD
TAGS: PBOR, PGOV, AR, CI
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/07b670df-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014